

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks. Claims 9 and 35 have been canceled without prejudice or disclaimer of the subject matter contained therein. Claims 1, 6, 11, 18, 23, 24, 34, 36 and 37 have been amended. Currently, claims 1-8, 10-34, and 36-38 are pending in the present application of which claims 1, 11, and 34 are independent. No new matter has been added.

Claims 1-5, 11-13, 15, 25-29, 34, and 36 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Zawilinski (U.S. Patent Number 5,676,138). Claims 6-10, 16, 17, 30, and 35 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Kazama (U.S. Patent Number 6,111,580). Claim 14 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Ark (U.S. Patent Number 6,190,314). Claims 18-24 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Abecassis (U.S. Patent Number 5,664,046). Claims 31 and 32 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Black (U.S. Patent Number 5,774,591). Claims 33 and 38 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Bentolila (U.S. Patent Publication Number 2003/0101449). Claim 37 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Shinohara (U.S. Patent Number 2003/00005431). The above rejections are respectfully traversed for at least the reasons set forth below.

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Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1-5, 11-13, 15, 25-29, 34, and 36 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by the disclosure contained in Zawilinski. This rejection is respectfully traversed because the claimed invention as set forth in amended claims 1, 11, and 34 and the claims that depend therefrom are patentably distinguishable over Zawilinski.

Zawilinski discloses a system including measurement devices of physiological variables operably connected to a computerized analyzer and having a multimedia display for displaying resulting data, such as each of a plurality of semantic descriptors associated with each of a plurality of emotional responses of a human at a given moment over a preselected time period

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during the presentation of a stimulus. A multimedia computerized system is described for measuring, analyzing, storing and displaying emotional responses elicited by one or more human beings being or having been presented a stimulus. The system comprises a stimulus presentation device for presenting a stimulus, such as a television commercial, occurring over a predetermined period of time to each of one or more individuals forming a population sample; measuring devices for measuring and recording a plurality of values associated with each of a plurality of physiological variables, such as heartrate, electromyography (EMG) and electrodermal activity (EDA; software programmed for receiving and translating each value measured by statistical calculation into a unitless statistical measure known as a z-score, then associating the z-score with an associated emotion or state of feeling.

Claim 1 recites "at least one sensor for sensing a physical reaction by the viewer..., wherein the at least one sensor includes a microphone for picking up vocalizations made by the viewer; and a processor for receiving the sensor signal and analyzing it to determine if it can be associated with at least one recognizable viewer emotional response." Zawilinski fails to teach the use of a microphone as a sensor, as recited in claim 1. Specifically, Zawilinski fails to teach the use of a signal from a sensor including a microphone to determine at least one emotional response.

Accordingly, Zawilinski fails to teach all of the features contained in claim 1, and thus, these claims are believed to be allowable over Zawilinski. Claims 2-8 and 10 depend upon claim 1 and are also allowable over Zawilinski at least by virtue of their dependencies. Therefore, the examiner is respectively requested to withdraw this rejection.

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Amended claim 11 recites a "method of assessing viewer response to television programming... comprising the steps of... associating a perceived physical-condition status with a viewer response; and determining when a program segment is being received that corresponds to a pre-selected viewer response previously associated with a physical-condition status." Zawilinski fails to teach use of a viewer's physical-condition status to determine that a program segment corresponds to a desired viewer response, as described in claim 11. Specifically, Zawilinski fails to teach a step of determining when a program segment corresponds to a pre-selected viewer response.

Accordingly, Zawilinski fails to teach all of the features contained in claim 11, and thus, these claims are believed to be allowable over Zawilinski. Claims 12-33 depend upon claim 11 and are also allowable over Zawilinski at least by virtue of their dependencies. Therefore, the examiner is respectfully requested to withdraw this rejection.

Claim 34 recites a "method of assessing listener response to audio programming... comprising the steps of... monitoring at least one listener physical condition, said at least one listener physical condition including at least one audible response; and associating said at least one audible response with a viewer emotional response..." Zawilinski fails to teach associating at least one audible response with a viewer emotional response, as recited in claim 1. Specifically, Zawilinski fails to teach monitoring at least one audible response; and associating said at least one audible response with a viewer emotional response.

Accordingly, Zawilinski fails to teach all of the features contained in claim 34, and thus, these claims are believed to be allowable over Zawilinski. Claims 36-38 depend upon claim 34

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and are also allowable over Zawilinski at least by virtue of their dependencies. Therefore, the examiner is respectfully requested to withdraw this rejection.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claim 6-10, 16, 17, 30, and 35 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Kazama. Of these claims, claims 9 and 35 have been cancelled.

The rejection of claims 6-10 is respectfully traversed because Zawilinski and Kazama, considered singly or in combination, fail to teach or suggest the claimed invention as set forth in amended claim 1 and its dependents.

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Zawilinski discloses a system including measurement devices of physiological variables operably connected to a computerized analyzer, substantially as described above.

Kazama discloses a system for controlling an electronic device with user action, using a video camera to monitor facial expressions and determine if attention is being paid to a device by a user.

Claim 1, as amended, incorporates elements from cancelled claim 9 and recites that the system includes "at least one sensor for sensing a physical reaction by the viewer viewing the displayed programming and generating a signal representative of the physical reaction, wherein the at least one sensor includes a microphone for picking up vocalizations made by the viewer; and a processor for receiving the sensor signal and analyzing it to determine if it can be associated with at least one recognizable viewer emotional response..." The Official Action asserts that Zawilinski discloses all the elements of cancelled claim 9 except for the use of a microphone for picking up speech signals, and relies on Kazawa to show use of a microphone. However, the Applicants submit that Kazawa fails to teach or suggest the use of a microphone for generating a signal that can be associated with an emotional response, as recited in claim 1. Kazawa's system merely recognizes predetermined words relating to operation of specified equipment, and activates equipment in response to word recognition (Page 6, ll. 32-44). There is no indication that Kazawa's system analyzes words for emotional responses or content.

At least by virtue of Zawilinski's and Kazawa's failure to teach or suggest the above identified element of claim 1 as amended, the combination of these references is not sufficient to establish a *prima facie* case of obviousness under 35 U.S.C. § 103. Accordingly, the Examiner is

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respectfully requested to allow amended claim 1 over Zawilinski in view of Kazama. Claims 2-8 and 10 depend from allowable claim 1 and are also allowable over Zawilinski in view of Kazama at least by virtue of their dependencies.

Claims 16, 17, and 30 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Kazama. The Applicants submit that claim 11, as amended, is not anticipated by Zawilinski. Therefore, claims 16, 17, and 30, which depend from claim 11, are allowable at least by virtue of their dependency. The Examiner is therefore respectfully requested to withdraw the rejection of claims 16, 17, and 30.

Claim 34, as amended, incorporates elements from cancelled claim 35 and recites a "method of assessing listener response to audio programming [by]... monitoring at least one listener physical condition, said at least one listener physical condition including at least one audible response; and associating said at least one audible response with a viewer emotional response." The Official Action asserts that claim 35, which recited that "the monitoring step comprises monitoring [an] audibly observable response," corresponds to claim 9, and is analyzed and rejected for the same reasons. Accordingly, it is the applicant's understanding that the Official Action takes the position that Zawilinski discloses all the elements of cancelled claim 35 except for monitoring an audibly observable response, and relies on Kazawa to show monitoring an audibly observable response. However, the Applicants submit that Kazawa fails to teach or suggest monitoring an audibly observable response for association of the response with a viewer emotional response, as recited in claim 34. Kazawa's system merely recognizes predetermined words relating to operation of specified equipment, and activates equipment in response to word

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recognition (Page 6, ll. 32-44). There is no indication that Kazawa's system analyzes words for emotional responses or content.

At least by virtue of Zawilinski's and Kazawa's failure to teach or suggest the above identified element of claim 34 as amended, the combination of these references is not sufficient to establish a *prima facie* case of obviousness under 35 U.S.C. § 103. Accordingly, the Examiner is respectfully requested to allow amended claim 34 over Zawilinski in view of Kazama. Claims 36-38 depend from allowable claim 1 and are also allowable over Zawilinski in view of Kazama at least by virtue of their dependencies. It is noted that the Examiner argued, in his analysis of claim 36, that analysis of electrical activity of muscles used when laughing is taught by Zawilinski (Page 4 of the Office Action); however, the applicants respectfully submit that, as electrical activity cannot be heard, it is not an audible response in the meaning of claim 34.

Claims 18-24 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Abacassis. This rejection is respectfully traversed because there is no suggestion or motivation in either Zawilinski or Abacassis to combine the two references to achieve the claimed invention as set forth in claim 11, which has been amended to incorporate an element drawn from claims 23 and 24, and its dependent claims 18-24.

Zawilinski discloses a system including measurement devices of physiological variables operably connected to a computerized analyzer, substantially as described above.

Abacassis discloses a video retrieval system responsive to a viewer's video content preferences.

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The Official Action states that "it would have been obvious to combine the systems of Zawilinski and Abacassis in order to provide a system which can provide alternate programming." The Official Action appears to allege that the motivation resides in the use of physiological responses to determine alternative programming.

However, this motivation would not suggest or motivate one of ordinary skill in the art to combine the systems of Zawilinski and Abacassis so as to arrive at a system as described in claim 11, from which claims 18-24 depend. The Official Action acknowledges that, while Zawilinski teaches that physiological responses can be used to determine a viewer preference level, he fails to disclose the step of "applying the preference level to enhance program selection (Page 8; the remaining limitation of claim 18)." Further, Zawilinski fails to teach determination that a program segment corresponds to a pre-selected viewer response, as recited in amended claim 11, from which claims 18-24 depend. Abacassis teaches use of a viewer's content preferences to enhance program selection; however, Abacassis fails to teach that preference levels can be determined based on physiological responses or a physical-condition status. Instead, preferences are input directly by the user via a video content preference screen (See Fig. 4). Neither Zawilinski or Abacassis teaches determination that a program segment is being received that corresponds to a pre-selected viewer response previously associated with a physical-condition status, as recited in amended claim 11.

For at least the forgoing reasons, it is respectfully submitted that amended claim 11 is not obvious under 35 U.S.C. § 103 over Zawilinski in view of Abacassis. Further, claims 18-24 depend from allowable claim 11 and are also allowable over Zawilinski in view of Abacassis at

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least by virtue of their dependencies. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 18-24.

Claim 14 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Ark. The Applicants submit that claim 11, as amended, is not anticipated by Zawilinski. Specifically, Zawilinski fails to teach determination that a program segment corresponds to a pre-selected viewer response, as recited in claim 11. In addition, Ark fails to teach determination that a program segment corresponds to a pre-selected viewer response; Ark is merely relied on to teach monitoring of a user's body temperature. Therefore, claim 14, which depends from claim 11, is allowable at least by virtue of its dependency. The Examiner is therefore respectfully requested to withdraw the rejection of claim 14.

Claims 31 and 32 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Black. The Applicants submit that claim 11, as amended, is not anticipated by Zawilinski. Specifically, Zawilinski fails to teach determination that a program segment corresponds to a pre-selected viewer response, as recited in claim 11. In addition, Black fails to teach determination that a program segment corresponds to a pre-selected viewer response; Black is merely relied on to teach monitoring of furrowing of a user's brow. Therefore, Claims 31 and 32, which depend from claim 11, are allowable at least by virtue of their dependencies. The Examiner is therefore respectfully requested to withdraw the rejection of Claims 31 and 32.

Claims 33 and 38 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Bentolila. The Applicants submit that claim 11, as amended, is not

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anticipated by Zawilinski. Specifically, Zawilinski fails to teach determination that a program segment corresponds to a pre-selected viewer response, as recited in claim 11. Further, the Applicants submit that claim 34, as amended, is not anticipated by Zawilinski. Specifically, Zawilinski fails to teach monitoring of an audible response, as described in claim 34. In addition, Bentolila fails to make up for either of these deficiencies; Bentolila is merely relied on to teach use of a Hidden Markov Model technique. Therefore, Claims 33, which depends from claim 11, and 38, which depends from claim 34, are allowable at least by virtue of their dependencies. The Examiner is therefore respectfully requested to withdraw the rejection of Claims 33 and 38.

Claim 37 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zawilinski in view of Shinohara. The Applicants submit that claim 34, as amended, is not anticipated by Zawilinski. Specifically, Zawilinski fails to teach monitoring of an audible response; and associating said at least one audible response with a viewer emotional response, as described in claim 34. In addition, Shinohara also fails to teach association at least one audible response with a viewer's emotional response; Shinohara merely shows recognition of a viewer based on vocal patterns (Page 2, paragraph [0026]). Therefore, Claim 37, which depends from claim 34, is allowable at least by virtue of its dependency. The Examiner is therefore respectfully requested to withdraw the rejection of Claim 37.

Conclusion

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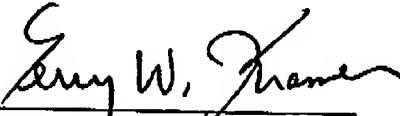
In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

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Respectfully submitted,
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